

borrowers, while others have helped over 50 percent. And it's not surprising that some of the servicers with the worst numbers are the same big banks that were happy to be bailed out by TARP not too long ago.

It is time to tell these big banks that enough's enough. We need protections for homeowners, and we need to penalize the servicers who have failed to offer the help they promised.

That is why I am introducing legislation today, the Mortgage Modification Reform Act, to stop the big banks from abusing homeowners and to start penalizing those who do not live up to their promise to provide homeowners with the relief they need.

The Mortgage Modification Reform Act would charge banks "late fees" for every month that they fail to evaluate a homeowner for this program. After 3 months, if a homeowner has not received an answer on whether their mortgage will be modified, the banks' payments will be reduced 10 percent for each month that it fails to evaluate the homeowner. By reducing payments to the banks over time, the bank will be encouraged to evaluate these borrowers earlier and more frequently. This also protects the taxpayer by only rewarding those banks that respond quickly and punishing those that fail to act. Banks will have to perform to get paid, and if they don't, their compensation will stay with the taxpayer.

This legislation would also require banks to stop the foreclosure process until it determines whether a borrower qualifies. This would also give much-needed peace of mind to homeowners who aren't sure which will come first: the modification they need, or the sale of their home.

In addition, the legislation would prevent banks from imposing fees while they wait for a decision. There is no reason that a bank should charge a homeowner for being delinquent while waiting for evaluation in the program. There is no reason for a homeowner to pay fees for an unnecessary foreclosure process. This legislation would put an end to these abusive practices.

Finally, the Mortgage Modification Reform Act provides a protection for borrowers that has been missing from day one of this program: a way for homeowners to request a review of the bank's decision. Right now, the banks make all the decisions whether a homeowner qualifies for the program or not. There is no way for the homeowner to appeal that decision. But we know that those decisions aren't always right. Many homeowners were originally told that they didn't qualify, but ask their Senator or get legal assistance to ask the servicer to take another look. Often, they did qualify for the program, but the servicer did not evaluate the borrower properly.

But not every homeowner should have to involve their Senator or a lawyer to get their bank to respond. They should be able to make their case on

their own to an independent arbiter. This legislation requires the Treasury Department to create a separate, independent review process to allow homeowners who feel they have been wrongly denied the chance to stay in their home. In addition, to ensure transparency, this legislation would require the servicer to submit documentation to the Treasury for each denial that it makes.

Making this program work isn't just important for these homeowners, it's also critical to our economic recovery. With million homeowners across the nation behind on their mortgages and at risk of foreclosure, we need this program achieve its potential of stopping millions of homes from flooding the housing market and further depressing home values.

I urge my colleagues to join me to prevent banks from continuing to abuse this program, and to get it on track to provide help to the millions of homeowners who need it.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 3161

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Mortgage Modification Reform Act of 2010".

SEC. 2. DEFINITIONS.

In this Act—

(1) the term "covered trial loan modification" means a trial loan modification—

(A) offered by a servicer to a homeowner under a home loan modification program; and

(B) for which the servicer has received from the homeowner the information required for a trial loan modification;

(2) the term "home loan modification program" means a home loan modification program put into effect by the Secretary under title I of division A of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211 et seq.), including the Home Affordable Modification Program;

(3) the term "homeowner" means an individual who applies for a home loan modification under a home loan modification program;

(4) the term "permanent loan modification" means any agreement reached between a homeowner and a servicer on a long-term basis, as determined by the Secretary, under a home loan modification program;

(5) the term "qualified counselor" means a qualified counselor described in section 255(f) of the National Housing Act (12 U.S.C. 1715z-20(f));

(6) the term "Secretary" means the Secretary of the Treasury;

(7) the term "servicer" has the same meaning as in section 129 of the Truth in Lending Act (15 U.S.C. 1639a) (relating to the duties of servicers of residential mortgages), as added by section 201(b) of the Helping Families Save Their Homes Act of 2009 (Public Law 111-22; 123 Stat. 1638);

(8) the term "servicer incentive payment" means a payment that is made by the Secretary to a servicer—

(A) in exchange, or as an incentive, for making a loan modification under a home loan modification program; and

(B) at the time the servicer makes an offer of a trial or permanent modification to a homeowner; and

(9) the term "trial loan modification" means any agreement reached between a homeowner and a servicer on a temporary basis, as determined by the Secretary, under a home loan modification program.

SEC. 3. FORECLOSURE.

A servicer may not initiate or continue a foreclosure proceeding with respect to the mortgage of a homeowner if—

(1) the homeowner submitted an application for a loan modification under a home loan modification program—

(A) before receiving a notice of foreclosure from the servicer; or

(B) not later than 30 days after the homeowner received a notice of foreclosure from the servicer; and

(2) the servicer has not made a determination, as described in section 5(a) that the homeowner does not qualify for a loan modification under a home loan modification program.

SEC. 4. PROCESS FOR REVIEW OF IMPROPER DENIALS.

(a) PROCESS FOR REVIEW.—

(1) IN GENERAL.—The Secretary shall establish a process by which a homeowner may request the Secretary to review a denial by a servicer of an application by the homeowner for a trial loan modification or permanent loan modification.

(2) QUALIFIED COUNSELORS.—The process established under paragraph (1) shall include the use of qualified counselors to report wrongful denials of trial loan modifications and permanent loan modifications.

(3) SUPPORTING DOCUMENTATION.—The Secretary shall require a servicer to submit supporting documentation with respect to any denial by the servicer of an application by a homeowner for a trial loan modification or permanent loan modification that is reviewed by the Secretary under the process established under paragraph (1).

(b) PENALTIES.—If the Secretary determines after a review under the process established under subsection (a) that a servicer has wrongly denied the application of a homeowner for a trial loan modification or a permanent loan modification, the Secretary shall impose a penalty on the servicer.

SEC. 5. PENALTIES FOR SERVICERS THAT DO NOT TIMELY EVALUATE HOMEOWNERS.

(a) TIME FOR EVALUATION OF HOMEOWNERS.—Not later than 3 months after the date on which a homeowner submits an application for a loan modification to a servicer that participates in a home loan modification program, the servicer shall—

(1) evaluate the application of the homeowner; and

(2) notify the homeowner that—

(A) the homeowner is qualified for a trial loan modification or a permanent loan modification under the home loan modification program; or

(B) the servicer has denied the application.

(b) PRIORITY FOR EVALUATING AMENDMENTS.—

(1) PRIORITY.—A servicer that participates in a home loan modification program shall evaluate the applications of homeowners for loan modifications in the order in which the servicer receives the applications.

(2) PROHIBITION.—A servicer that participates in a home loan modification program may not select the order in which the applications of homeowners are evaluated for loan modifications—

(A) on the basis of—

(i) the income of the homeowner that made the application; or

(ii) the value of the loan for which a modification is requested; or